

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 JARRETT PAYNE, *et al.*,

5 Plaintiffs,

6 v.

20 CV 8924 (CM) (GWG)

7 MAYOR BILL DE BLASIO, *et al.*,

8 Defendants.

Conference

9 SAMIRA SIERRA, *et al.*,

10 Plaintiffs,

11 v.

20 CV 10291 (CM)

12 CITY OF NEW YORK, *et al.*,

13 Defendants.

14 CHARLES HENRY WOOD,

15 Plaintiff,

16 v.

20 CV 10541 (CM)

17 MAYOR BILL DE BLASIO, *et al.*,

18 Defendants.

19 PEOPLE OF THE STATE OF
20 NEW YORK,

21 Plaintiffs,

22 v.

21 CV 322 (CM)

23 CITY OF NEW YORK, *et al.*,

24 Defendants.

25 -----x

1 ADAMA SOW, *et al.*,

2 Plaintiffs,

3 v.

21 CV 533 (CM)

4 CITY OF NEW YORK, *et al.*,

5 Defendants.

-----x
6
7 New York, N.Y.
February 22, 2021
2:00 p.m.

8 Before:

9 HON. COLLEEN McMAHON,

10 Chief Judge

11 HON. GABRIEL W. GORENSTEIN, (via Skype)

12 U.S. Magistrate Judge

13
14 APPEARANCES

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Attorney for Plaintiff People of The State of New York

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1 (Case called)

2 THE COURT: Could I have appearances for the People.

3 MS. MARQUEZ: Good afternoon, your Honor, Lillian
4 Marquez. I'm joined by my colleague, Jessica Clarke, from the
5 Office of the State Attorney General on behalf of the People.

6 THE COURT: Thank you. Can I have appearances for the
7 Payne plaintiffs.

8 MS. BIKLEN: Good afternoon, your Honor, Molly Biklen
9 from the New York Civil Liberties Union. I am here with my
10 cocounsel, Jessica Perry, also from the New York Civil
11 Liberties Union.

12 THE COURT: Let me just suggest, Ms. Biklen, and
13 anybody who has the luxury of having a microphone relatively
14 close, that you remain seated because we have discovered that
15 through the masks it works better, especially when you have
16 some feedback.

17 The Sierra plaintiffs.

18 MR. CLARK: Good afternoon, your Honor, Jason Clark
19 from Hamilton Clarke, as well as Michael Spiegel, cocounsel for
20 Hamilton Clarke.

21 THE COURT: Mr. Spiegel is on Zoom -- we are on Skype
22 today. I don't want to give credit to the wrong platform.

23 The Wood plaintiffs.

24 MR. LIEB: Good afternoon, your Honor, Douglas Lieb
25 for plaintiff Henry Wood.

1 THE COURT: Good afternoon.

2 Is it Sow or Sow?

3 MR. MOORE: Sow, your Honor. Jonathan Moore, Beldock
4 Levine & Hoffman, along with Elena Cohen, for the plaintiffs in
5 Sow v. City of New York.

6 THE COURT: Thank you.

7 Corporation Counsel.

8 MS. WEISS: Good afternoon, your Honor, Dara Weiss for
9 the City of New York, the mayor, the police commissioner, and
10 the chief of department. With me are my colleagues Elissa
11 Jacobs and Brachah Goykadosh.

12 THE COURT: Terrific.

13 Just out of curiosity, I had a couple of letters from
14 police unions indicating that there is a possibility that we
15 are going to have intervention motions. Is anybody here
16 representing them right now?

17 We have a public line open, is that correct,
18 Ms. Lewis?

19 THE LAW CLERK: Yes.

20 THE COURT: To those of you who are listening in the
21 on public line, welcome to this proceeding.

22 I would like to introduce to anyone who does not know
23 him my colleague, the Honorable Gabriel Gorenstein, who is the
24 magistrate judge in this group of cases. If we were in a
25 normal world he would be sitting here next to me. He is, I

1 gather, on Skype.

2 Judge Gorenstein, would you like to say hello.

3 JUDGE GORENSTEIN: Hello. I'm here listening to
4 everything.

5 THE COURT: Great. Wonderful.

6 I should say that Judge Gorenstein and I have both
7 reviewed everything that you all have submitted in writing
8 prior to today, and we have also talked and compared notes. We
9 have surprisingly congruent views of how things should proceed.
10 We came to them independently.

11 This is what I understand the state of play to be. We
12 have one *parens patriae* action that was filed by the Attorney
13 General, we have the ACLU action, the Payne action, which is
14 not a class action, I don't believe. It's filed on behalf of a
15 large group of identified individuals.

16 MS. BIKLEN: Eleven plaintiffs, your Honor.

17 THE COURT: Correct, 11 plaintiffs.

18 Then we have three purported class actions filed on
19 behalf of largely identical classes, and the Payne plaintiffs
20 would be members of those classes if they were not proceeding
21 on their own. That's what we have got in terms of cases.

22 MR. LIEB: Your Honor, if I may, Wood is not a class
23 action.

24 THE COURT: Wood is not a class action. Thank you.

25 You need to identify yourself by names when you speak

1 for the court reporter. You probably need to speak a little
2 more loudly and a lot more slowly than you otherwise would.
3 That seems to be what works the best.

4 Since we went to double masking, the great advantage
5 of my singer's mask is that a lot of resonance space has been
6 lost because there is something underneath it.

7 When these cases came in, I entered a temporary order
8 of consolidation. Everybody wants me to vacate that. But
9 everybody understands that this is a case where the discovery
10 is congruent. These are five cases where the discovery is
11 largely, if not entirely, congruent, so nobody appears to
12 oppose something called coordinated discovery. To me that's
13 pretrial consolidation. I don't understand the distinction
14 between coordinated discovery and consolidated for pretrial
15 purposes. So I actually think that we are on the same page
16 there.

17 There are people who think that a discovery and
18 possibly trial, I guess, should be bifurcated as between cases
19 brought by individuals and now discovery relating to city
20 policies.

21 I understand that there will be multiple motions to
22 dismiss and that the parties want me to suspend my usual rule
23 requiring that qualified immunity motions be made at the outset
24 of the case, thereby dispensing with that issue for the moment.

25 And I have advised already and I think you know that

1 there are at least two unions representing police officers and
2 detectives who are considering making motions for leave to
3 intervene out of some concern that the city will not adequately
4 represent the interests of the police. That's what Judge
5 Gorenstein and I think we have on the plate today.

6 I'll listen to anything that anybody wants to say, but
7 we have read your letters. Both of us have read your letters,
8 and we have discussed your letters and your letters are a
9 matter of public record. They can be accessed by anyone on
10 ECF. I think that you should assume that you are dealing with
11 a bench that's acquainted with your issues. They are all lined
12 up here to my left.

13 Let's start with the Attorney General.

14 MS. MARQUEZ: Good afternoon, your Honor.

15 THE COURT: Stay seated. It's so much easier for the
16 court reporter.

17 MS. MARQUEZ: I believe since, as you have
18 acknowledged, you have read our letter and you set forth what
19 we are willing to do, I understand that coordinated discovery
20 may be something in alignment with consolidation, and we have
21 noted that we are ready and prepared and think it is
22 appropriate to do overlapping depositions and document demands.

23 Of course, we don't want to tie ourselves to each
24 other in a way that would delay proceedings, particularly
25 because some cases have been started as early as October of

1 last year. But you can see our positions on that point and I
2 won't belabor them. We are happy to discuss any other matters
3 that your Honor wants to bring up.

4 In terms of bifurcation, since we didn't file earlier
5 and did not have an opportunity to respond to that, we don't
6 think that that is appropriate. A lot of our claims overlap
7 with the *Monell* style and, in particular, because we do name
8 policy makers who had personal involvement in the protests,
9 including the chief of the department being present at the
10 protests at Mott Haven --

11 THE COURT: Slow down. It's amazing how the masks
12 muffle your sound. The nose keeps falling down.

13 MS. MARQUEZ: Just on the point of bifurcation, as I
14 understand it, the city wants to bifurcate even at the level of
15 the trial, which case law says would deprive the Court of
16 flexibility.

17 THE COURT: Don't worry about the trial. We are not
18 there. We are not at the trial.

19 MS. MARQUEZ: The only other thing that we have
20 noticed in the papers filed by the city that I'll just briefly
21 point out, in terms of *parens*, your Honor has found that we
22 have *parens* authority, and there are other cases in the circuit
23 and in the Third which found that states have *parens* authority.

24 THE COURT: I haven't found anything. You filed a
25 *parens patriae* lawsuit. That's what the Attorney General does

1 for a living.

2 MS. MARQUEZ: Yes. It has been upheld, standing on
3 the state's part in bringing claims on that standing theory in
4 unconstitutional policing actions.

5 Just briefly on the point of 50(e) in terms of
6 requiring notices of claim, because our action seeks only
7 equitable --

8 THE COURT: If they make a motion to dismiss your
9 claim, I will deal with it. I don't think they are going to
10 make a motion addressed to you. They are certainly not going
11 to make a 50(e) motion addressed to you. You are the State of
12 New York.

13 MS. MARQUEZ: Unless the Court has any other
14 questions, based on those, I just wanted to touch on things
15 because the city filed their letter after ours, so that might
16 not be apparent.

17 THE COURT: That's OK. That's fine.

18 Ms. Biklen.

19 MS. BIKLEN: Yes, your Honor.

20 THE COURT: Anything you want to say in addition to
21 what's in your letter?

22 MS. BIKLEN: I will only add, your Honor --

23 THE COURT: Do yourselves a favor, pull that mic in a
24 little closer to you.

25 MS. BIKLEN: How is this, your Honor?

1 THE COURT: Much better.

2 MS. BIKLEN: Your Honor, just in terms of the question
3 of consolidation or coordination, it does sound like the court
4 is fully aware of the issues that we have raised.

5 I will note that the Payne case was filed October 26
6 of 2020, and the plaintiffs have been working very diligently
7 to move their case ahead. So at this point the plaintiffs do
8 understand that coordinated discovery consolidation for
9 pretrial purposes will take place, but seek a schedule that
10 allows them to continue moving --

11 THE COURT: Fear not, Ms. Biklen.

12 MS. BIKLEN: Thank you, your Honor.

13 Unless there are other questions, we are prepared to
14 address the motions.

15 THE COURT: What is the other nonclass action?

16 Mr. Lieb, anything else you want to say?

17 MR. LIEB: The only thing I would briefly address is
18 intervention which came up after I filed my letter, your Honor.
19 I don't see how there would be a basis for a nonparty to
20 intervene in a damages action. We are not seeking any
21 injunctive relief in our action, and so the question of whether
22 the police union's interests are adequately represented, I
23 think, is a nonissue in that context. That's all I have.

24 THE COURT: I'm sure the city will have more to say on
25 that one.

1 For the Sierra.

2 MR. SPIEGEL: Yes, your Honor. Good afternoon.

3 THE COURT: Hello, Mr. Spiegel.

4 MR. SPIEGEL: Hello, your Honor. Are you able to hear
5 me adequately?

6 THE COURT: Yes. Excellent.

7 MR. SPIEGEL: I would like to address the city's
8 letter. It was not filed in the Sierra case. The city has not
9 yet filed a notice of appearance, and they have not answered
10 our complaint, which was filed on December 7.

11 The concern I have, as I mentioned in my letter, a
12 number of the attorneys here, Mr. Moore, the NYCLU, were
13 plaintiffs' counsel during the RNC cases which began more than
14 15 years ago. Those cases took nine years to resolve before
15 there was a global settlement of those cases.

16 THE COURT: Wrong judge.

17 MR. SPIEGEL: Well, I won't comment on that, but I'm
18 very happy to hear that, your Honor.

19 The concern I have is when I look at the city's
20 letter, they have not yet assigned an Assistant Corporation
21 Counsel in the Sow case. They have made no appearances in
22 Sierra.

23 And this resonates with those of us who were in the
24 RNC cases which, of course, include the city attorneys, who
25 were very much present and pursued their strategy over that

1 nine years.

2 My concern is that excuses such as budgetary concerns,
3 which they raise as an excuse for not having appointed a line
4 Assistant Corporation Counsel in the Sow case, and they haven't
5 even come up with any excuse for ours.

6 To the extent that your Honor commented that they are
7 going to make motions, we urge you to set a tight and --

8 THE COURT: Trust me. It's going to be set in five
9 minutes.

10 MR. SPIEGEL: OK. I won't belabor that any further.

11 The only other comment I would make is that there is
12 no reason in these cases not to let discovery proceed as those
13 motions are litigated.

14 THE COURT: Correct.

15 MR. SPIEGEL: That would be our position. I have
16 nothing further. Thank you very much, your Honor.

17 THE COURT: For the Sow case.

18 MR. MOORE: Your Honor, I just have two things to add
19 to what's been said.

20 One is that we do intend to file an amended complaint,
21 and we would want a schedule set for that. We intend to do it
22 expeditiously. We will be filing an amended complaint.

23 The second is our claim, our case has the broadest
24 class action allegations that cover all the different
25 demonstrations over a certain period of time in the city. When

1 we say both, a class based on a B2 and a B3 class, and we would
2 want to set a briefing schedule for the class cert. motion.

3 THE COURT: It's going to be very far delayed. Class
4 certification will be very much delayed.

5 MR. MOORE: I'm sorry, Judge. I didn't hear you.

6 THE COURT: Will be very much delayed.

7 MR. MOORE: OK, your Honor. That's all we have.

8 THE COURT: Does the city have anything else to say
9 aside from what's in its letter?

10 MS. WEISS: Yes, your Honor, if I may.

11 First of all, your Honor, if I can address --

12 THE COURT: You need to get down so you are closer to
13 the microphone. I'm really sorry. I know this is horrible.

14 MS. WEISS: With respect to the Sierra case, I'll just
15 start out there, we were not aware that it was part of this
16 group of cases until we received an ECF bounce on Friday. We
17 know that counsel had asked that it be part of the group for
18 this conference today, but we didn't know that it had actually
19 been accepted because --

20 THE COURT: Come on. You knew it was going to be.

21 MS. WEISS: Respectfully, your Honor, we didn't.

22 THE COURT: You assumed we would have a second judge
23 to decide these issues? OK. Fine.

24 MS. WEISS: A few other things that weren't addressed
25 in our letter because --

1 THE COURT: I know. They crossed.

2 MS. WEISS: With respect to qualified immunity, we
3 think that your Honor should go forward with your usual
4 schedule for qualified immunity cases because the city would
5 move for qualified immunity on behalf of individual defendants.

6 As the law is clear, cases need not go forward against
7 individuals if they would be entitled to qualified immunity,
8 and they should be relieved from the lawsuit from the earliest
9 possible time, which is what your rules envision. We think
10 that your rules should be held intact, although we imagine we
11 might need longer than your usual 30-day schedule because there
12 are a number of individual defendants, and it's not clear if we
13 would be able to get the depositions of plaintiffs done and
14 motions made in your very tight time period.

15 We also just wanted to point out, everyone knows the
16 burden that these cases are on the city, but we just want to
17 make clear that all of these cases, for the most part, have a
18 lot of the same components. For instance, I think all of the
19 cases have something to do with the Mott Haven protest. They
20 all have a lot --

21 THE COURT: This is all one case, as far as I'm
22 concerned on my docket, in my head. I have a lot of lawyers.
23 I have a lot of parties. Some people want injunctive relief
24 only. Some people want damages only. Some people want
25 injunctions and damages. But this is all one case.

1 MS. WEISS: The city tends to agree with that. So we
2 just wanted to make clear to the Court and to all the parties
3 that while you obviously have a number of law firms and a
4 number of attorneys working on this one case, there is just one
5 law firm for the defense.

6 THE COURT: But that's OK. It's the Corporation
7 Counsel and it can do this job.

8 MS. WEISS: We certainly can, your Honor.

9 THE COURT: It is, as the Corporation Counsel always
10 reminds me, the largest law firm in the City of New York.

11 MS. WEISS: That is true.

12 Also, with respect to early motions, and I think this
13 was raised in the letter, there may be motions on standing. We
14 are still looking into that. We haven't decided for sure, but
15 I just wanted to make sure that that was pointed out.

16 THE COURT: It's part of the motion to dismiss. You
17 move on all grounds or you forfeit.

18 MS. WEISS: Yes, your Honor. I am not going to
19 belabor the points on *Monell* and bifurcation. I think it's
20 clearly laid out in our letter.

21 Some of plaintiffs' counsel have noted that they are
22 planning on amending their complaints, so we wanted to see if
23 there was going to be a date set by which they must do so.

24 THE COURT: When are you going to advise the
25 plaintiffs what you believe to be inadequate about their *Monell*

1 allegations?

2 MS. WEISS: Well, we don't know, your Honor, what
3 they're planning on amending.

4 THE COURT: No, no, no. You've already said that
5 their *Monell* allegations as currently pleaded are inadequate.
6 So if I'm going to give them a date on which to amend, before
7 that date you have to tell them what you think is wrong, which
8 you can do in a letter.

9 MS. WEISS: We will be happy to do that, Judge.

10 THE COURT: Good. Do it by Friday.

11 MS. WEISS: Your Honor, can we have longer than that?

12 THE COURT: Do it by Friday.

13 MS. WEISS: We also wanted to bring up with you also
14 the Attorney General. We had asked them this previously, and
15 we are still not sure of the answer. We had spoken to them
16 about why they were suing the mayor, the police commissioner,
17 and the chief of department in their individual capacities, as
18 opposed to simply their official capacities, and we were hoping
19 that we could get some more information about that.

20 THE COURT: Does the Attorney General have any
21 response to that?

22 MS. MARQUEZ: We do, and we did respond to that. We
23 sent case law which has claims that the Court in the EDNY
24 allowed it to move forward for injunctive and declaratory
25 relief against individuals, including a sheriff, matters that

1 are similar to what we have in this case under 1983. And we
2 received no further response to that e-mail.

3 THE COURT: So you will make a motion to dismiss them
4 out. I am not bound by decisions of my colleagues across the
5 river, but I frequently find them to be wise. I always find
6 them to be interesting reading.

7 MS. WEISS: Thank you, your Honor.

8 Finally, we just wanted to mention that we don't
9 believe that there is merit to the Attorney General's case in
10 light of the fact that the governor, who also represents the
11 State of New York, has requested that all state police
12 departments create programs to reimagine the police, and the
13 NYPD has been doing just that. They started making reforms
14 that have already been implemented and will continue to do so,
15 including, for example, the new disciplinary matrix that the
16 NYPD has started. Final plans for these changes are due on
17 April 1 of this year.

18 In addition, the city council has been working on a
19 number of bills to reform certain aspects of policing in New
20 York City.

21 THE COURT: What you are suggesting is Ms. James' case
22 may at some point become moot?

23 MS. WEISS: That's correct, your Honor.

24 THE COURT: I am sure Ms. James doesn't think so. But
25 I hear you. I hear you.

1 MS. WEISS: Finally, with respect to the intervention
2 by the unions, I am not going to belabor it now because there
3 are no representatives of the union, but we don't believe that
4 those interventions would have any merit.

5 THE COURT: Great.

6 MS. WEISS: Thank you.

7 THE COURT: Judge Gorenstein, before I go into the
8 things that we discussed earlier today, is there anything that
9 you would like to raise with any of these parties?

10 JUDGE GORENSTEIN: No. I think everything has been
11 covered. Thank you.

12 THE COURT: It's wonderful to have such a wonderful
13 partner as Judge Gorenstein. I found it very interesting and
14 gratifying, actually, personally gratifying, to learn that his
15 list and my list looked pretty much the same, and we had not
16 talked about the case before this morning.

17 MR. MOORE: Judge, I had a couple of comments to make
18 based on what people said, if that's appropriate now.

19 THE COURT: All right. Sure.

20 MR. MOORE: First, on the issue of qualified immunity,
21 if the Court wants to tell us what her decision is on that now,
22 then I won't go into it.

23 In lieu of that, I don't think anything is gained at
24 this point by a motion on qualified immunity because of the
25 injunctive claims and the *Monell* claims. All those officers

1 are going to have to be deposed anyway.

2 THE COURT: They are all going to be in the case.

3 MR. MOORE: Right.

4 The other thing is, just a matter of personal
5 preference with respect to the NYPD's implementation of a
6 disciplinary matrix, that came out of the Floyd case, the
7 stop-and-frisk case in which I am one of the lead counsel in.
8 That's not something that was done in response to these
9 demonstrations.

10 THE COURT: As far as I'm concerned, I have one case
11 with five subcases in front of me, and I'm sure there are other
12 things going on, and I'm sure that the governor has his own
13 agenda, the Attorney General has her own agenda, and the mayor
14 has his own agenda, and city council has its own agenda. And
15 that's all very interesting to me, but I deal with lawsuits.
16 Right now I've got five live lawsuits.

17 I meant no disrespect to my former and forever
18 colleague who handled the RNC cases, brilliant judge.

19 MR. MOORE: Yes.

20 THE COURT: But I don't like cases to hang around for
21 a long period of time. My attitude toward these cases is they
22 are going on a rocket docket. And if you all want to settle
23 them, which is how these things usually end, I won't be waiting
24 around for you to settle them. Frankly, I'm too old for that.
25 If I want to get this done, I need to do it. So you are going

1 to be on a rocket docket moving towards a trial and don't think
2 that's going to be delayed.

3 I'm happy to send you to mediation. I'm happy to have
4 a settlement master appointed, if that's what you want. I'm
5 happy to entrust that to Judge Gorenstein or, if he thinks it's
6 appropriate, to one of his colleagues. But you will be
7 litigating this case toward a December 31, 2021 deadline for
8 discovery.

9 The cases will be consolidated for pretrial purposes,
10 which will allow motions to be heard on a single schedule and
11 discovery to be held simultaneously in all cases. The fact
12 that people are seeking different types of relief is of
13 absolutely no moment. The cases all raise the same issues with
14 respect to the same demonstrations. Maybe every demonstration
15 isn't in every complaint, but I'll bet by the end every one
16 will be, and they will be handled together.

17 The Attorney General's case will be the lead case.
18 It's too soon to decide whether the cases will be consolidated
19 for trial on some or all issues. I don't need to decide that
20 now, and I'm not going to decide that now. I realize that the
21 defendants intend to file motions to dismiss, but discovery
22 will begin immediately and will encompass both the claims of
23 individuals and *Monell* issues. The city has already indicated
24 to at least some defendants that it finds *Monell* allegations to
25 be inadequate. I'm serious. It has until Friday to explain in

1 writing why.

2 I expect amended pleadings. If there are going to be
3 any, to be filed by March 5. Motions to dismiss due March 26.
4 Replies, April 16. Responses, April 16. Reply papers due
5 April 30. No surreplies. Any issue that is raised for the
6 first time in a reply brief will be ignored. That's the law.

7 I won't make you make qualified immunity motions
8 within 30 days. It does not mean that I have altered my views
9 on the meaning of *Stevenson v. Doe* or what would justify a
10 finding of qualified immunity and what would not. But in the
11 unusual circumstances of the case, with the large number of
12 plaintiffs who would have to be deposed, and especially because
13 it's going to go forward with all of these defendants
14 testifying as witnesses, in any event, which is absolutely the
15 only burden on them is participating in discovery and their
16 witnesses, and they are going to be participating in discovery.
17 So I will accede to the defendants' wishes in that regard.

18 Motions for leave to intervene -- this will go on the
19 docket, since I have gotten these letters -- are due on March
20 3. Opposition papers due March 19. Reply papers, March 26.
21 Until those motions are decided, the proposed intervenors will
22 not participate in the case. If the motions are made and are
23 granted, the proposed intervenors will have access to such
24 discovery as Judge Gorenstein deems appropriate.

25 Aside from the cutoff date that I've given you, Judge

1 Gorenstein will set discovery schedules, including,
2 undoubtedly, quite shortened times for response, and he will
3 set procedures for objections and dealing with same. He will
4 be in day-to-day charge of the case. He is going to do that.
5 I am going to decide the motions.

6 By the way, when I say all discovery, in my courtroom
7 that means all discovery, which includes plaintiffs'
8 depositions, defendants' depositions, answers to
9 interrogatories, production of documents, designation of
10 experts, expert reports, and expert depositions. Notice of
11 experts have to be exchanged by July 1. Reports due September
12 1. Depositions by the end of the year.

13 MR. MOORE: I'm sorry, Judge. Could you repeat that
14 last thing about the experts. I didn't hear the dates.

15 THE COURT: Sure. Designate your experts by July 1.
16 Reports to be served by September 1. Depositions by the end of
17 the year. I anticipate that we will be briefing class
18 certification in the fall.

19 The parties will report to the Court by November 15
20 whether anyone anticipates making a motion for summary judgment
21 at the close of discovery. As I frequently say, there is a
22 Rule 56a. I haven't found it yet in print. I just know it
23 exists. It's the rule that says that you must make a motion
24 for summary judgment no matter what, including if you don't
25 have the slightest chance of winning it. So I'm expecting

1 someone to take me up on that on November 15, but that's the
2 date for advising me.

3 I probably won't be seeing very much of you over the
4 course of the next ten months, but Judge Gorenstein undoubtedly
5 will, so let me turn the floor over to him.

6 Judge Gorenstein, what would you like to say to these
7 folks?

8 JUDGE GORENSTEIN: Well, what I would like to do is to
9 ask the parties to see if they can come to an agreement as to
10 the interim dates; and if they can't, to provide whatever
11 schedules they do agree upon in a letter to me. If it is a
12 single schedule and they are all in agreement, that's
13 fantastic. They can put that in a letter to me. I'm sure I
14 would simply approve it. If there is disagreement, then the
15 parties should give me whatever their competing schedule is.

16 What I'd like to do is give you a deadline for giving
17 me that schedule. I guess my preference would be a week from
18 today. If that's a problem, it can go a day or two if the
19 parties all agree. In the absence of an agreement among the
20 parties, let's shoot for March 1. If someone wanted an
21 extension, if you want to go to the 2nd or 3rd, it's not the
22 end of the world. I think that's the thing I would want. If
23 it turns out that we need to have a conference on it, then I
24 would call a conference.

25 I would really like to see the letters and, if

1 possible, just be able to decide the interim dates based upon
2 the letters. I think it will be helpful if you include all of
3 the dates that have been mentioned here, not just the discovery
4 dates. The schedule will show the dates for the motions to
5 dismiss and for the letters on summary judgment and so forth.

6 THE COURT: I'll get all those up on the docket later
7 today, all those dates.

8 JUDGE GORENSTEIN: If it's already in an order that
9 Judge McMahon had issued, then you don't have to include it in
10 the order that I'm talking about.

11 THE COURT: You have your two hard task masters.
12 There are two ways to litigate a case.

13 One is the matrimonial docket way, where things keep
14 getting postponed in the belief that ultimately it will all
15 work itself out.

16 And the other is the, let's set a trial date, and it's
17 a real date. I can't set a trial date in this case today, but
18 I can give you a tight discovery deadline, and I mean it. And
19 I appreciate it that it will be on a burden on everyone and
20 particularly on the Corporation Counsel. I understand that.
21 Nothing I can do about it.

22 If it should be that over the course of the next few
23 months things happen, whether at the behest of the governor or
24 at the behest of the mayor or the city council or possibly the
25 Attorney General, who knows, that make things better for those

1 of you who are interested in injunctive relief, you will let me
2 know.

3 Is there anything else that anybody has to say today?

4 MR. MOORE: One final thing, your Honor.

5 I'm assuming, and maybe we will take it up with Judge
6 Gorenstein, but in terms of the number of the presumptive
7 depositions and the number of interrogatories, we can work that
8 out with Judge Gorenstein.

9 THE COURT: You will either work it out among
10 yourselves or you will take it up with Judge Gorenstein and he
11 will decide it, and I will not overrule him. I have enough to
12 do deciding your motions.

13 It's interesting to sit in this chair. This is the
14 first time in some months since I had a trial in the fall.
15 It's been since then. It's kind of nice. It's nice to see you
16 all here, as weird as this is. I look forward to seeing you
17 again. I hope that by the time I see you again we will not be
18 wearing masks and the Plexiglas will disappear and the witness
19 box will not look like this.

20 The Corporation Counsel wants to say something. Yes,
21 your Honor.

22 THE COURT: I can't hear you.

23 MS. GOYKADOSH: The one thing that I wanted to raise
24 is, we did mention in our letter moving for a stay because of
25 the open --

1 THE COURT: There will be no stay. If you've been
2 paying attention, it should be obvious. You can make a motion.
3 I will write deny across the front of it. There will be no
4 stay.

5 MS. GOYKADOSH: We absolutely understand that. But
6 the reason why we are raising that at this point is because we
7 will be unable to get documents from the Civilian Complaint
8 Review Board.

9 THE COURT: That's fine. You can have other
10 documents.

11 MS. GOYKADOSH: I just wanted to raise that issue for
12 the Court.

13 THE COURT: Judge Gorenstein will handle that, but
14 there are lots of documents to be produced. I have no doubt.

15 MS. GOYKADOSH: Thank you, your Honor.

16 THE COURT: Thank you, everybody. Nice to see you
17 all.

18 (Adjourned)

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